

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of PATTI Z. WOODWARD and DEPARTMENT OF VETERANS AFFAIRS,
VETERANS ADMINISTRATION MEDICAL CENTER, Lexington, KY

*Docket No. 00-2712; Submitted on the Record;
Issued November 26, 2001*

DECISION and ORDER

Before MICHAEL E. GROOM, BRADLEY T. KNOTT,
A. PETER KANJORSKI

The issue is whether the Office of Workers' Compensation Programs met its burden of proof to terminate appellant's compensation benefits effective November 6, 1999.

Appellant, then a 46-year-old registered nurse, filed a claim for a traumatic injury on August 8, 1988 when she injured her back helping a patient with morning care. She did not return to work. The Office accepted appellant's claim for lumbosacral strain and subluxation and later accepted post-traumatic stress disorder (PTSD).

On September 8, 1999 the Office issued a notice of proposed termination and on October 29, 1999 having reviewed the additional arguments raised by appellant, issued a decision terminating her compensation benefits on the grounds that the medical evidence established that her injury-related condition had resolved. The Office found that the weight of the physical medical evidence of file was represented by the opinions of the Office referral physicians, Dr. Robert L. Keisler, a Board-certified orthopedic surgeon, and Dr. Robert P. Granacher, a Board-certified psychiatrist. Appellant disagreed with the decision and requested review by an Office hearing representative. By decision dated August 17, 2000, the Office hearing representative affirmed the Office's decision terminating appellant's compensation benefits effective November 6, 1999 on the grounds that the residuals of appellant's employment-related conditions had resolved. The instant appeal follows.

The Board has duly reviewed the case record in the present appeal and finds that the Office failed to meet its burden of proof to terminate appellant's compensation benefits effective November 6, 1999, as the record contains a conflict in medical opinion with respect to appellant's accepted back condition.

Once the Office accepts a claim, it has the burden of proving that the disability has ceased or lessened in order to justify termination or modification of compensation benefits.¹

¹ *Lawrence D. Price*, 47 ECAB 120 (1995).

After it has determined that an employee has disability causally related to his or her federal employment, the Office may not terminate compensation without establishing that the disability has ceased or that it is no longer related to the employment.² Furthermore, the right to medical benefits for an accepted condition is not limited to the period of entitlement for disability.³ To terminate authorization for medical treatment, the Office must establish that appellant no longer has residuals of an employment-related condition which require further medical treatment.⁴

With respect to appellant's back condition, her primary treating physician, Dr. Cary L. Twyman, a Board-certified neurologist, submitted periodic progress notes in which he stated that appellant suffered from chronic back pain, sacroiliac degenerative disc disease and fibromyalgia syndrome. Dr. Twyman consistently stated that appellant was totally disabled by his back condition, but did not discuss or offer an opinion as to the cause of the diagnosed conditions, or their relationship, if any, to appellant's employment. He also submitted a series of Forms, CA-20, attending physician's reports on which he also diagnosed post-traumatic back pain, fibromyalgia, lumbar spondylosis and lumbar degenerative disc disease. Here, Dr. Twyman indicated by check mark that he believed appellant's conditions were causally related to her employment injury. The record also contains progress notes and a Form CA-20 report from appellant's treating osteopath, Dr. Douglas E. Vick, who diagnosed strains of the lumbosacral spine, somatic dysfunction of the lumbar, sacral, pelvic, rib, thoracic and cervical regions and indicated by check mark that these conditions were caused by appellant's employment injury. By way of explanation, Dr. Vick stated that his "findings matched the mechanism of injury." Finally, the record also contains a magnetic resonance imaging (MRI) report from 1989, which reveals a bulging disc at L4-5 with no evidence of rupture or herniation, superimposed on degenerative disc disease and a more recent MRI from 1997, which reveals broad posterior central disc herniation at L4-5 associated with diffuse annular bulging and degenerative end plate changes, post annular bulges at L5-S1 but with no evidence of nerve root entrapment at any level.

On June 18, 1999 the Office referred appellant to Dr. Robert L. Keisler, a Board-certified orthopedic surgeon, for a second opinion evaluation. In his report dated July 21, 1999, Dr. Keisler diagnosed degenerative disc disease and probable dysplasia with chronic pain syndrome, depression and a probable variant of fibromyalgia, but stated that he found no objective findings of any medical condition other than the MRI evidence of degenerative disc disease, which was preexisting and unrelated to appellant's 1988 employment injury. He stated that appellant likely had an exacerbation of her back pain, due to her 1988 lumbar strain but that this would have resolved in about six weeks. Finally, he stated that appellant could work eight hours a day, with no restrictions other than on unguarded bending or lifting or twisting stresses of the lumbar spine.

² *Id.*

³ *Furman G. Peake*, 41 ECAB 361, 364 (1990).

⁴ *Id.*

Section 8123(a) of the Federal Employees' Compensation Act,⁵ provides: "If there is disagreement between the physician making the examination for the United States and the physician of the employee, the Secretary shall appoint a third physician who shall make an examination." In this case, in terminating appellant's compensation benefits, the Office relied in part upon the opinion of Dr. Keisler, who opined that appellant had no objective evidence of any physical condition causally related to her employment injury. Her treating physicians, Dr. Twyman and Dr. Vick, diagnosed post-traumatic back pain, fibromyalgia, lumbar spondylosis and lumbar degenerative disc disease and indicated that these conditions were caused, at least in part, by appellant's employment injury. The Board, therefore, finds that a conflict in medical evidence exists between the opinions of appellant's treating physicians, Drs. Twyman and Vick and the Office referral physician, Dr. Keisler, regarding whether appellant continues to suffer from residuals of her accepted employment-related back conditions. The Office, therefore, did not meet its burden of proof in terminating appellant's compensation effective November 6, 1999.⁶

The Board further finds that the Office properly found that appellant's employment-related psychiatric condition had ceased by November 6, 1999, the date the Office terminated benefits.

On June 18, 1999 the Office referred appellant to Dr. Robert P. Granacher, Jr., a Board-certified psychiatrist, for a second opinion regarding her accepted post-traumatic stress disorder. In a well-rationalized and well-explained report dated July 26, 1999, Dr. Granacher diagnosed major depression, recurrent, with severe personality disorder, but no evidence of post-traumatic stress disorder, the condition originally accepted by the Office. The physician stated that appellant's depression preexisted her 1988 injury and that, while the injury may have aggravated it, the work-related effects had ceased and her current condition is totally independent of any injury she received at work. Upon reviewing Dr. Granacher's report, appellant's treating Board-certified psychiatrist, Dr. Rosa Riggs, submitted a Form CA-20 report and accompanying narrative statement dated September 28, 1999. The record does not contain any of Dr. Riggs' earlier reports. He took issue with Dr. Granacher's finding that appellant had no evidence of PTSD and explained why she originally diagnosed this condition. On the Form CA-20, Dr. Riggs indicated by check mark that appellant's condition was caused by her employment and wrote "months of threats of job loss, not believing her injury was true, employees assistance would not counsel her, she was made to work in the laundry room." Dr. Riggs diagnosed PTSD, chronic adjustment disorder, depression, anxiety, chronic back pain, fibromyalgia, chronic fatigue, lumbar disc disease and cognitive impairment and concluded that appellant was totally and permanently disabled. She did not offer any discussion, however, as to why appellant continued to be disabled from PTSD long after she stopped work at the employing establishment, rather than from her many other nonemployment-related psychiatric conditions. In contrast, Dr. Granacher's opinion is well rationalized in that he explains the interplay between appellant's

⁵ 5 U.S.C. §§ 8101-8193, 8123(a).

⁶ See *Gail D. Painton*, 41 ECAB 492 (1990).

various conditions.⁷ Therefore, with respect to the issue of whether appellant continued to suffer from residuals of her accepted post-traumatic stress disorder, the Office properly relied on the opinion of Dr. Granacher in terminating appellant's compensation for this condition effective to November 6, 1999.

The decision of the Office of Workers' Compensation Programs dated August 17, 2000 is reversed in part and affirmed in part.

Dated, Washington, DC
November 26, 2001

Michael E. Groom
Alternate Member

Bradley T. Knott
Alternate Member

A. Peter Kanjorski
Alternate Member

⁷ Rationalized medical opinion evidence is medical evidence that includes a physician's reasoned opinion on whether there is a causal relationship between the claimant's diagnosed condition and the established incident or factor of employment. The opinion of the physician must be based on a complete factual and medical background of the claimant, must be one of reasonable medical certainty and must be supported by medical rationale explaining the nature of the relationship between the diagnosed condition and the established incident or factor of employment. *Charles E. Evans*, 48 ECAB 692 (1997); *Earl D. Smith*, 48 ECAB 615 (1997).